FILED
United States Court of Appeals
Tenth Circuit

June 2, 2009

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

KELVIN L. DAVIS; SHARON D. DAVIS; KTD, a minor; JTD, second minor; JDD, third minor,

Plaintiffs - Appellants,

v.

DIANE WILKINS, Judge; ROBERT PARRISH; LAURA THOMPSON; SONIA SWEENEY; GUARDIAN AD LITEM'S OFFICE; UTAH ATTORNEY GENERAL'S OFFICE; STATE OF UTAH; VERONICA KASPRZAK; WENDY GARCIA; AMY REED; RICK SMITH; DWAYNE BETOURNAY; UTAH DIVISION OF CHILD AND FAMILY SERVICES,

Defendants - Appellees.

No. 09-4037
(D.C. No. 1:07-CV-00148-CW)

ORDER

Before **TACHA**, **LUCERO**, and **McCONNELL**, Circuit Judges.

This appeal is from orders issued from the bench by the district court granting the motion to dismiss filed by some of the defendants and denying the plaintiffs' motion for entry of default judgments against other defendants.

Because no final judgment has been entered we dismiss for lack of appellate jurisdiction.

This court has jurisdiction to review only final decisions, 28 U.S.C. § 1291, and specific types of interlocutory orders not applicable here. A final decision is one that disposes of all issues on the merits and leaves nothing for the court to do but execute the judgment. *Cunningham v. Hamilton County,* 527 U.S. 1915, 204 (1999) (citing to *Van Cauwenberghe v. Biard*, 486 U.S. 517, 521 (1988)); *Mesa Oil Inc. v. United States*, 467 F.3d 1252, 1254 (10th Cir. 2006).

The plaintiffs contend that this court has jurisdiction under Fed. R. Civ. P. 54(b) to review the order granting the motion to dismiss because the district court "intended" the order to be final under Rule 54(b). This argument is without merit.

The law in this circuit is clear that Rule 54(b) requires an explicit determination that there is no just reason for delay and an explanation supporting the determination. *See Stockman's Water Co. v. Vaca Partners*, 425 F.3d 1263, 1265 (10th Cir. 2005) ("courts entering a Rule 54(b) certification should 'clearly articulate their reasons and make careful statements based on the record supporting their determination of "finality" and "no just reason for delay" so that we [can] review a 54(b) order more intelligently[] and thus avoid jurisdictional remands.'") (quoting *Old Republic Insurance Co. v. Durango Air Services, Inc.*, 283 F.3d 1222, 1225 n.5 (10th Cir. 2002)).

Moreover, we point out that this court issued its order on April 14, 2009. In the more than one month since that order was entered, the plaintiffs did not seek a Rule 54(b) certification from the district court.

The plaintiffs argue that there is jurisdiction over the order denying entry of default judgment under the collateral order doctrine. "The requirements for collateral order appeal have been distilled down to three conditions: that an order (1) conclusively determine the disputed question; (2) resolve an important issue completely separate from the merits of the action, and (3) be effectively unreviewable on appeal from a final judgment." *Will v. Hallock*, 546 U.S. 345, 349 (2006) (quotations omitted). All three requirements must be met. *Mesa Oil. Inc. v. United States*, 467 F.3d at 1254.

Here the order being appealed fails on the last ground. In order to be effectively unreviewable on appeal from a final judgment, a right to avoid trial "that would imperil a substantial public interest" is required. *See Will*, 546 U.S. at 959. No such right is present here.

APPEAL DISMISSED. The plaintiffs' request that this appeal be held in abeyance is **DENIED**.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk,

Ellen Rich Reiter
Deputy Clerk/Jurisdictional Attorney